

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JERIANE M. JACO

RESPONDENT,

**v.
BRIAN L. JACO**

APPELLANT.

DOCKET NUMBER WD79972

DATE: March 18, 2017

Appeal From:

Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:

Division Two: Cynthia L. Martin, Presiding Judge, Lisa White Hardwick, Judge and Alok Ahuja, Judge

Attorneys:

Randall O. Barnes, Jefferson City, MO, for respondent.

Sara Catherine Michael, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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JERIANE M. JACO,

RESPONDENT,

v.

BRIAN L. JACO,

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No. WD79972

Cole County

Before Division Two: Cynthia L. Martin, Presiding Judge, Lisa White Hardwick, Judge and Alok Ahuja, Judge

Father appeals from a judgment denying his motion to modify the child support provisions of a dissolution decree. Father argues that the trial court erred in considering his new spouse's income when ordering no child support be paid, and that the trial court erred in equally dividing the uncovered expenses of the minor child between the parents.

AFFIRM.

Division Two holds: The trial court did not err in considering Father's financial resources, including the extent to which reasonable expenses are shared with his new spouse, to find that Father failed to sustain his burden to demonstrate a substantial and continuing change in circumstances that renders the existing child support terms unreasonable. Furthermore, it was not an abuse of discretion to conclude that Father was capable of contributing equally to the child's uncovered expenses.

Judge Ahuja's Dissenting Opinion States:

Contrary to the majority, he contends that the circuit court's judgment cannot be affirmed based on a presumed finding that Father had failed to prove a substantial and continuing change of circumstances. Instead, the circuit court actually stated the basis on which it denied Father's motion to modify child support: that the presumed child support amount was rebutted as unjust and inappropriate because of Step-Mother's income. Judge Ahuja argues that we should be reviewing the circuit court's judgment based on the findings the court actually made. On the merits, Judge Ahuja would hold that the circuit court's explicit consideration of the entirety of Step-Mother's gross income, to find the presumed child support amount to be unjust and inappropriate, violated §453.400.1, RSMo, which states that "no court shall consider the income of a stepparent . . . in determining the amount of child support to be paid by a natural or adoptive parent."

Majority Opinion by Cynthia L. Martin, Judge with Judge Hardwick joining
Dissenting Opinion by Alok Ahuja, Judge

March 18, 2017

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